

### **REMARKS**

The Non-Final Office Action mailed November 27, 2009, has been received and reviewed. Prior to the present communication, claims 1-21 and 24-30 were pending in the subject application. All claims stand rejected. Each of claims 1 and 12 has been amended herein. As such, claims 1-21 and 24-30 remain pending. It is submitted that no new matter has been added by way of the present amendments. Claims 1-11 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1-11 stand rejected under 35 U.S.C. § 101. Claims 1-8 and 12-30 stand rejected under 35 U.S.C. § 103(a). Reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks.

#### **Rejection based on 35 U.S.C. § 112**

Claims 1-11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office states in claim 1, it is unclear how the determining step relates to the paid yield representing the advertising revenue. The Office notes the difference between the recitation of the paid yield being determined “based on” performance, conversion rate and revenue sharing percentage, and the later recitation of the same paid yield as representing advertising revenue from all user referrals.<sup>1</sup> As a result, applicants have amended claim 1 to remove the later recitation that the Office asserts created the ambiguity related to the determining step of claim 1.

Therefore, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 112 to claim 1. Claims 2-11 depend, either directly or indirectly, from independent claim 1. As such, it is respectfully requested that the rejection under 35 U.S.C. § 112 be withdrawn for these claims as well.

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<sup>1</sup> See *Non-final Office Action*, p. 2.

**Rejections based on 35 U.S.C. § 101**

Claims 1-11 stand rejected under 35 U.S.C. § 101 as the Office asserts that the claimed invention is directed to non-statutory subject matter.<sup>2</sup> Consequently, claim 1 has been amended herein to recite a one or more machines that perform one or more essential functions of claim 1. As a result, Applicants respectfully request the withdrawal of the rejection under 35 U.S.C. § 101 to claim 1. Claims 2-11 depend, either directly or indirectly, from independent claim 1. As such, it is respectfully requested that the rejection under 35 U.S.C. § 101 be withdrawn for these claims as well.

**Rejections based on 35 U.S.C. § 103**

A.) Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in Graham v. John Deere counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations.<sup>3</sup> To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in Graham and to provide some articulated reason, suggestion, or motivation, found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention.<sup>4</sup>

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<sup>2</sup> *Id.*, p. 3.

<sup>3</sup> *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>4</sup> *See, Application of Bergel*, 292 F. 2d 955, 956-957 (1961).

B.) Unpatentable Rejection Over U.S. Publication No. 2003/0046161 to Kamangar et al. in View of U.S. Publication No. 2003/0220837 to Asayama and Further in View of U.S. Publication No. 2005/0096980 to Koningstein et al.

Claims 1-8 and 12-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0046161 to Kamangar et al. (hereinafter the “Kamangar reference”) in view of U.S. Publication No. 2003/0220837 to Asayama (hereinafter the “Asayama reference”) and further in view of U.S. Publication No. 2005/0096980 to Koningstein, et al. (hereinafter the “Koningstein reference”).

### **CLAIM 21**

Independent claim 21 is directed to computer-accessible medium having instructions, that when executed by a computing system having a processor and memory, cause the computing system to perform a method for making optimal use of paid placement space on a search results user interface. The method includes *“recording a number of times a user navigates from a paid listing placed in a search results user interface to a destination Web site associated with the listing.”* The method also includes *“capturing a revenue amount of purchases generated at the destination Web site as a result of the user navigation.”* The method also includes *“calculating a conversion rate associated with the paid listing that indicates an average revenue amount of purchases per user navigation from the paid listing in the search result user interface to the destination Web site.”* The method also recites *“measuring a performance, wherein the performance is a comparison between the number of times the user navigates to the destination Web site and the number of times the paid listing is placed in the search results user interface.”* The method additionally recites *“receiving a revenue sharing percentage associated with the paid listing, wherein the revenue sharing percentage is a percentage of the revenue generated at the destination Web site as a result of user navigation that is used, in part, to place the paid listing.”* Further, the method includes *“calculating a paid*

*yield, wherein the paid yield is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage.”* The method also includes *“placing the paid listing on the search results user interface in exchange for at least a share of the paid yield, wherein the placement in the search results user interface is determined, in part, by the calculated paid yield”*.

Contrary to claim 21, the Kamangar reference is directed to ordering of advertisements requested by an ad consumer that is based on scores generated for the ads.<sup>5</sup> The Kamangar reference continues to discuss the ordering of an ad may be done based on “both accepted ad price information and ad performance information.”<sup>6</sup> Paragraphs [0013] and [0014] of the Kamangar reference continue to provide a number of exemplary ad price information and performance information that are used to calculate the score. However, it is respectfully submitted that at no point does the Kamangar reference teach or suggest *“calculating a paid yield, wherein the paid yield is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage”* as recited in claim 21. Additionally, it is respectfully submitted that at no point does the Kamangar reference teach or suggest *“receiving ... a revenue sharing percentage [that] is a percentage of the revenue generated at the destination Web site as a result of user navigation that is used, in part, to place the paid listing* also required by claim 21. The Office implicitly concedes the same by stating that the Kamangar reference does not explicitly disclose similar features.<sup>7</sup>

As a result of the Office conceding that the Kamangar reference fails to teach at least those features, the Office relies on the Asayama reference to cure these deficiencies.<sup>8</sup> However, contrary to claim 21, the Asayama reference is merely directed to maximizing referral

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<sup>5</sup> See Kamangar reference, Abstract.

<sup>6</sup> See *Id.*, ¶ [0012].

<sup>7</sup> See *Non-final Office Action dated 11/27/2009*, p. 16.

website revenue generated from web affiliate programs.<sup>9</sup> In particular, a dispatcher of the Asayama reference selects advertisements for display based on the (1) revenue generated, (2) conversion ratios, and (3) user purchase histories.<sup>10</sup> However, it is respectfully submitted that at no point does the Asayama reference teach or suggest “*calculating a paid yield, wherein the paid yield is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage*” as required by claim 21. Wherein the revenue sharing portion is defined within the claim as *the revenue sharing percentage is a percentage of the revenue generated at the destination Web site as a result of user navigation that is used, in part, to place the paid listing.*

The Office asserts that the Asayama reference, at paragraph [0018], teaches “*receiving a revenue sharing percentage associated with the paid listing,*” as required by claim 21.<sup>11</sup> However, it is respectfully submitted that at no point does the Asayama reference teach or suggest “*receiving a revenue sharing percentage associated with the paid listing,*” where the revenue sharing percentage is used to calculate *a paid yield, wherein the placement in the search results user interface is determined, in part, by the calculated paid yield,* as required by claim 21.

Instead, at the most, the Asayama reference merely discusses a commission that is provided to a referring website.<sup>12</sup> The Asayama reference commission is based on a percentage of the revenue generated at the affiliate (the site to which the advertisement caused a user to visit).<sup>13</sup> That is, a referring website can be paid a percentage of revenue resulting from the display of an advertisement as a commission for displaying the advertisement. However, at no

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<sup>9</sup> *Id.*

<sup>10</sup> See Asayama reference, ¶ [0002].

<sup>11</sup> See *Id.*, ¶ [0005].

<sup>12</sup> See Final Office Action dated 06/09/2009, p. 19.

<sup>13</sup> See Asayama reference, ¶ [0018].

point does the commission received by the referring website in the Asayama reference used to calculate a paid yield that is used when determining the placement of an advertisement in the search result interface. When read as a whole, claims 21 relies on the revenue sharing percentage to calculate the paid yield, which in turn, is used for “the placement in the search results user interface determined, in part, by the calculated paid yield.” Consequently, the placement within the search result interface of the advertisement is determined by the revenue sharing percentage.

Therefore, while the Asayama reference does provide a commission to a referring website for displaying an advertisement, the commission is not a factor when determining the placement of the advertisement within a search result interface.

Further yet, it is respectfully submitted that at no point does the Asayama reference teach or suggest “placing the paid listing on the search results user interface *in exchange for at least a share of the paid yield*,” as required by claim 21. When read as a whole, claim 21 recites that the paid yield “*is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage.*” Because, as stated above, the Asayama reference fails to teach or suggest the “revenue sharing percentage” as defined within claim 21, the Asayama reference fails to teach or suggest a paid yield that “*is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage.*”

As a result of at least some of the deficiencies discussed above, the Office relies on the Koningstein reference<sup>14</sup> to teach or suggest “*calculating a paid yield, wherein the paid yield is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage.*” Additionally, the Office relies on the Koningstein reference

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<sup>13</sup> See Asayama reference, ¶ [0018].

to teach or suggest “*placing the paid listing on the search results user interface in exchange for at least a share of the paid yield, wherein the placement in the search results user interface is determined, in part, by the calculated paid yield.*”

In particular, the Office relies on ¶ [0049] of the Koningstein reference. However, as recited in claim 21, “*the paid yield is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage.*” At the most, the Koningstein reference discusses ranking advertisements by a “real estate revenue efficiency” that is the revenue per specific page served.<sup>15</sup> Additionally, the Koningstein reference provides, at ¶ [0049] a ranking module that determines rankings of an advertisement based on “price parameter values, revenue efficiency and performance...”<sup>16</sup> However, it is respectfully submitted that at no time does the Koningstein reference teach or suggest *the paid yield is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage.*”

Consequently, it is respectfully submitted that the Koningstein reference also, therefore, fails to teach or suggest “*placing the paid listing on the search results user interface in exchange for at least a share of the paid yield, wherein the placement in the search results user interface is determined, in part, by the calculated paid yield.*” Because the Koningstein reference fails to teach or suggest the “paid yield” as defined in claim 21, it is respectfully submitted that it cannot therefore determine placement of an advertisement based on the calculated paid yield.

Accordingly, it is respectfully submitted that the Kamangar reference as modified by the Asayama and the Koningstein references does not teach or suggest all of the features of

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<sup>14</sup> See Non-final Office Action dated 11/27/2009, p. 16.

<sup>15</sup> See Koningstein reference, ¶ [0048].

<sup>16</sup> See Koningstein reference, ¶ [0049].

independent claim 21. Thus, Applicants respectfully submit that the Kamangar, Asayama, and Koningstein references, either alone or in combination, fail to teach or suggest all of the features of independent claim 21. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 21 under 35 U.S.C. § 103(a). Claim 21 is believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 24-30 depend directly or indirectly from independent claim 21. As such, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

### **CLAIM 1**

Independent claim 1 recites a computer-implemented method for optimizing the use of paid placement space in a search results Web page. The method includes, at least in part, *“receiving, at the computing device, a revenue sharing percentage associated with the paid listing, the revenue sharing percentage is a percentage of sales revenues from a user referral to the destination Web site that is used, in part, to determine the fee...”* The method also recites *“determining, with the processor, a paid yield associated with the paid listing based on multiplying together the performance monitored, the conversion rate calculated, and the revenue sharing percentage received.”* Further, the method recites *“placing the paid listing in the search results Web page based on the paid yield.”*

As discussed above with respect to claim 21, it is respectfully submitted that the Kamangar, Asayama, and the Koningstein reference, either alone or in combination, fail to teach or suggest all of the features of independent claim 1. For example, it is respectfully submitted that the Asayama reference fails to teach or suggest a revenue sharing percentage *“that is used, in part, to determine the fee”* for placing the advertisement. As discussed above, the Office relies on ¶ [0018] of the Asayama reference for teaching the same. However, as discussed



above, at the most, the Asayama reference merely discusses a commission that is provided to a referring website.<sup>17</sup>

The Asayama reference commission is based on a percentage of the revenue generated at the affiliate (the site to which the advertisement caused a user to visit).<sup>18</sup> That is, a referring website can be paid a percentage of revenue resulting from the display of an advertisement as a commission for displaying the advertisement. However, at no point does the commission received by the referring website in the Asayama reference used to determine a fee for placement of the paid listing.

Further, it is respectfully submitted that the Koningstein reference fails to teach or suggest calculating “*a paid yield associated with the paid listing based on multiplying together [1] the performance monitored, [2] the conversion rate calculated, and [3] the revenue sharing percentage received...*” as recited in claim 1 for at least those reasons discussed above. For example, the Office asserts that the Koningstein reference teaches the same with reference to ¶ [0049] of the Koningstein reference.<sup>19</sup> However, as discussed above, At the most, the Koningstein reference discusses ranking advertisements by a “real estate revenue efficiency” that is the revenue per specific page served.<sup>20</sup> Additionally, the Koningstein reference provides, at ¶ [0049] a ranking module that determines rankings of an advertisement based on “price parameter values, revenue efficiency and performance...”<sup>21</sup> However, it is respectfully submitted that at no time does the Koningstein reference teach or suggest calculating “*a paid yield associated with the paid listing based on multiplying together [1] the performance monitored, [2] the*

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<sup>17</sup> See Asayama reference, ¶ [0018].

<sup>18</sup> See Asayama reference, ¶ [0018].

<sup>19</sup> See Non-final Office Action dated 11/27/2009, p. 6.

<sup>20</sup> See Koningstein reference, ¶ [0048].

<sup>21</sup> See Koningstein reference, ¶ [0049].

***conversion rate calculated, and [3] the revenue sharing percentage received...***” as recited in claim 1.

Accordingly, for at least those reasons provided with respect to claims 21 and 1, it is respectfully submitted that the Kamangar reference as modified by the Asayama and the Koningstein references does not teach or suggest all of the features of independent claim 1. Thus, Applicants respectfully submit that the Kamangar, Asayama, and Koningstein references, either alone or in combination, fail to teach or suggest all of the features of independent claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Claim 1 is believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 1-9 depend directly or indirectly from independent claim 1. As such, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

#### CLAIM 12

Independent claim 12 recites features similar to those discussed with respect to claims 1 and 21. For example, independent claim 12 recites, in part, “*a revenue sharing percentage repository containing a revenue sharing percentage associated with the paid listing, the revenue sharing percentage indicates a percentage of conversion data that is shared with an advertiser displaying the paid listing.*” Additionally, claim 12 recites, in part, “*a processor to calculate a paid yield associated with the paid listing based on the performance data from the performance data repository multiplied by the conversion data from the conversion data registry multiplied by the revenue sharing percentage from the revenue sharing repository, the paid yield indicates how much money was generated when users visited the destination Web site over a period of time, and the paid yield is used to place the paid listing on the search results*

*Web page in exchange for a portion of the paid yield, wherein the portion of the paid yield is based, in part, on the revenue sharing percentage.”*

For at least those reasons previously discussed with respect to claims 1 and 21, it is respectfully submitted that the Kamangar, Asayama, and Koningstein references, either alone or in combination, fail to teach or suggest all of the features recited in claim 12. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Claim 12 is believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 13-20 depend directly or indirectly from independent claim 12. As such, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

C.) Unpatentable Rejection Over Kamangar in View of Koningstein and Further in View of U.S. Patent No. 7,031,932 to Lipsky et al.

Claims 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Kamangar reference in view of Koningstein reference and further in view of U.S. Patent No. 7,031,932 to Lipsky et al. (hereinafter the Lipsky reference). Claims 9-11 depend from previously discussed claim 1. It is respectfully submitted that the Lipsky reference fails to cure at least those deficiencies discussed above and previously address in response to the Final Office Action dated 06/09/2009. As such, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

### **CONCLUSION**

For at least the reasons stated above, each of claims 1-21 and 24-30 is believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned—by telephone at 816-474-6440 or via email at cwfisher@shb.com (such communication via email is herein expressly granted)—to resolve the same prior to issuing a subsequent action.

It is believed that no fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number MFCP.140316.

Respectfully submitted,

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